

LOS ANGELES COUNTY
EMPLOYEE RELATIONS ORDINANCE
ERCOM RULES & REGULATIONS

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(CURRENT TO JANUARY 2015)

Chapter 5.04

EMPLOYEE RELATIONS

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5.04.010 Title of provisions. The ordinance codified in this chapter shall be known as the "employee relations ordinance of the county of Los Angeles." (Ord. 9646 § 1, 1968.)

5.04.020 Policy statement. The board of supervisors of the county of Los Angeles declares that it is the public policy of the county and the purpose of the ordinance codified in this chapter to promote the improvement of personnel management and relations between the county of Los Angeles and its employees

and to protect the public by assuring, at all times, the orderly and uninterrupted operations and services of county government. This policy is supplemented by provisions:

A. Recognizing and defining the rights of employees to join organizations of their own choosing for the purpose of representation on matters affecting employee relations or to represent themselves individually in dealing with the county;

B. Establishing formal rules and procedures to provide for the orderly and systematic presentation, consideration and resolution of employee relations matters; and

C. Creating an independent employee relations commission to ensure that all county employees and their representatives are fairly treated, that their rights are maintained, and that their requests are fairly heard, considered and resolved. (Ord. 9646 § 2, 1968.)

5.04.030 Definitions. As used in the ordinance codified in this chapter, the following terms shall have the meanings indicated:

A. "Certified employee organizations" or "certified employee representative" means an employee organization, or its duly authorized representative, that has been certified by the employee relations commission as representing the majority of the employees in an appropriate employee representation unit.

B. "Commission" means the Los Angeles County employee relations commission established pursuant to Sections 5.04.100 through 5.04.190.

C. "Confidential employee" means an employee who is privy to decisions of county management affecting employee relations.

D. "Consult" or "confer" means to communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions.

E. "County" means the county of Los Angeles, a body corporate and politic, and political subdivision of the state of California, and where appropriate herein, "county" refers to board of supervisors, the governing body of the county, or any duly authorized management representative as herein defined.

F. "Employee" means any person employed by the county in a position in the classified civil service.

G. "Employee organization" means any lawful organization which includes employees of the county and which has as one of its primary purposes representing such employees in their employment relation with the county; provided, however, that said organization has no restriction on membership based on race, color, creed, sex or national origin.

H. "Employee relations" means the relationship between the county and its employees and their employee organizations, or when used in a general sense, the relationship between management and employees or employee organizations.

I. "Employee representation unit" means a unit established pursuant to Section 5.04.200 of this chapter.

J. "Fact-finding" means identification of the major issues in a particular dispute, review of the positions of the parties, resolution of factual differences by one or more impartial fact-finders and, the making of recommendations for settlement when directed by the commission.

K. "Impasse" means a deadlock in negotiations between a certified employee organization and the county over any matters required to be negotiated, or over the scope of the subject matter of negotiations.

L. "Management employee" means any employee having significant responsibilities for formulating and administering county policies and programs, and includes the chief executive officer, department heads, and any other employees who are so designated by the director of personnel based upon the recommendation of the department head or department heads concerned. For the purpose of this chapter, such persons shall not exceed two percent of the total number of full-time employees of the county.

M. "Management representative" means a department head as defined in Section 2.02.190 of this code, the administrative code of the county of Los Angeles, and includes the chief executive officer and the director of personnel, or any duly authorized representative of such department head or officer.

N. "Mediation" means the efforts of an impartial third person or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse.

O. "Negotiation" means performance by duly authorized management representatives and duly authorized representatives of a certified employee organization of their mutual obligation to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached. This obligation does not compel either party to agree to a proposal or to make a concession. Agreements concerning any matters within the exclusive jurisdiction of the board of supervisors or concerning any matters not otherwise delegated by the board shall become binding when executed by the board of supervisors and affected certified employee organizations. Agreements concerning matters within the exclusive jurisdiction of management representatives, or otherwise delegated to them by the board, shall become binding when executed by said affected management representatives and affected certified employee organizations.

P. "Ordinance" means, unless otherwise specified herein, the employee relations ordinance of the county of Los Angeles.

Q. "Professional" means:

1. A classification of employees engaged in work;
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work,
 - b. Involving the consistent exercise of discretion and judgment in its performance,

c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

2. A classification of employees who:

a. Have completed the courses of specialized intellectual instruction and study in paragraph 1 d of this subsection, and

b. Are performing related work under the supervision of a professional person in order to qualify to become a professional employee as defined in subdivision 1 of this subsection.

R. "Supervisory employee" means any employee, having authority to exercise independent judgment in the interest of the county, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Ord. 2013-0035 § 2, 2013; Ord. 9646 § 3, 1968.)

5.04.040 Construction and interpretation of chapter provisions. A. Nothing contained in the ordinance codified in this chapter shall abrogate any written agreements between any employee organization and the county in effect on October 4, 1968, the effective date of the ordinance codified herein. All such agreements shall continue in effect for the duration of the term specified therein unless modified or rescinded by mutual agreement of the parties thereto.

B. Nothing in this chapter shall be construed to deny any person or employee the rights granted by federal and state laws and the County Charter provisions.

C. The rights, powers and authority of the board of supervisors in all matters, including the right to maintain any legal action, shall not be modified or restricted by this chapter.

D. The enactment of the ordinance codified in this chapter shall not be construed as making the provisions of Section 923 of the California Labor Code applicable to employees of the county.

E. The provisions of this chapter are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the state of California (Sections 3500 et seq.) as amended in 1968. (Ord. 9646 § 16, 1968.)

5.04.050 Administration. It is the policy of the county to provide for the orderly, systematic and coordinated administration of all matters involving employee relations. In order to implement and coordinate the policies and procedures set forth in this chapter, the county shall have authority to adopt rules and regulations not inconsistent with law, including Ordinances 9646 and 85-0032 or

any other county ordinance, which shall be applicable to any or all departments, agencies or boards of the county in establishing and enforcing the employee relations program provided for herein. Nothing in this chapter shall prevent the chief executive officer from promulgating regulations governing relations between the county and the employee organizations not certified by the commission. (Ord. 2013-0035 § 3, 2013: Ord. 85-0032 § 1(a), 1985: Ord. 9646 § 14, 1968.)

5.04.060 Availability of data. A. To facilitate negotiations, the county shall provide to certified employee organizations concerned the published data it regularly has available concerning subjects under negotiation, including data gathered concerning salaries and other terms and conditions of employment provided by comparable public and private employers, provided that when such data is gathered on a promise to keep its source confidential, the data may be provided in statistical summaries but the sources shall not be revealed.

B. If an election for certification as the majority representative of the employees in an appropriate employee representation unit has been ordered, the chief executive officer shall provide, upon request by an employee organization which has qualified to be included on the ballot, a list of the names and departments of employees in the unit. Said list shall be provided not later than fifteen days prior to the date of said election. (Ord. 2013-0035 § 4, 2013: Ord. 85-0032 § 1(b), 1985: Ord. 9646 § 15, 1968.)

5.04.070 Employee rights. Employees of the county shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters of employee relations. Employees of the county also shall have the right to refuse to join, or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the county. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights. (Ord. 9646 § 4, 1968.)

5.04.080 County rights. It is the exclusive right of the county to determine the mission of each of its constituent departments, boards and commissions, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the exclusive right of the county to direct its employees, take disciplinary action for proper cause, relieve its employees from duty because of lack of work or for other legitimate reasons, and determine the methods, means and personnel by which the county's operations are to be conducted; provided, however, that the exercise of such rights does not preclude employees or their representatives from conferring or raising grievances about the practical consequences that decisions on these matters may have on wages, hours and other terms and conditions of employment. (Ord. 9646 § 5, 1968.)

5.04.090 Consultation and negotiation—Scope. A. All matters affecting employee relations, including those that are not subject to negotiations, are subject

to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations.

B. The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit.

C. Negotiation shall not be required on any subject preempted by federal or state law, or by County Charter, nor shall negotiation be required on employee or employer rights as defined in Sections 5.04.070 and 5.04.080 of this chapter. Proposed amendments to this chapter are excluded from the scope of negotiation.

D. Management representatives and representatives of certified employee organizations may, by mutual agreement, negotiate on matters of employment concerning which negotiation is neither required nor prohibited by this chapter. (Ord. 9646 § 6, 1968.)

5.04.100 Employee relations commission—Continued—Membership qualifications. A. There is continued a Los Angeles County employee relations commission, which shall implement and administer the provisions of this chapter.

B. The commission shall have three positions, as provided in Section 5.04.130. A member of the commission shall be appointed to a vacant position by, and serve at the pleasure of, the board of supervisors, which shall be referred to in this chapter as the "board." The members of the commission shall have expertise in the field of employee relations, shall reside in Los Angeles County and shall possess the integrity necessary to protect the public interest as well as the interest of the county and its employees. The board, if it finds that the best interests of the county will be served, may waive the residency requirement for a period not to exceed one year. (Ord. 2013-0035 § 5, 2013; Ord. 2006-0010 § 1, 2006; Ord. 90-0086 § 26(a), 1990; Ord. 9646 § 7(a), 1968.)

5.04.110 Employee relations commission—Length of service—Vacancy. A. Each member of the commission shall serve at the pleasure of the board. The period of service for each position on the commission shall be three years from the date of appointment, except as provided in Section 5.04.130D. Members serving in Position A and Position B shall exercise their duties until a successor is appointed. The member serving in Position C shall continue to exercise his or her duties until 90 calendar days following the end of his/her term, or a successor is appointed, whichever comes first.

B. No member of the commission may serve more than two consecutive full periods of service as specified in subsection A. The board may, by order, extend this length of service or waive this limit for individuals or the commission as a whole.

C. A member's position on the commission shall become vacant upon his or her death, resignation, or removal by the board. In the case of such a vacancy, the board shall appoint a successor to serve for the remainder of the unexpired period of service under subsection A of this section, as provided in Section 5.04.120.

D. The provisions of Chapter 5.12 of the County Code shall not apply to the commission. (Ord. 2013-0035 § 6, 2013; Ord. 2006-0010 § 2, 2006; Ord. 90-0086 § 26(b), 1990; Ord. 12300 § 1, 1981; Ord. 9646 § 7(b), 1968.)

5.04.120 Employee relations commission—Vacancies—Procedure. The procedure for filling a vacancy in Position A of the commission shall be as provided in Section 5.04.130A. The procedure for filling a vacancy in Position B of the commission shall be as provided in Section 5.04.130B. The procedure for filling a vacancy in Position C of the commission shall be as provided in Section 5.04.130C. (Ord. 2013-0035 § 7, 2013; Ord. 90-0086 § 26(c), 1990; Ord. 9646 § 7(c), 1968.)

5.04.130 Employee relations commission—Appointment of members.

Three commissioner positions are created as follows:

- A. Position A: The member shall be appointed from a list of two or more nominees submitted by the chief executive officer.
- B. Position B: The member shall be appointed from a list of two or more nominees submitted by a committee of certified employee organizations, as defined in Section 5.04.030A.
- C. Position C: The member shall be appointed from a list of two or more nominees jointly submitted by the chief executive officer and a committee of certified employee organizations as defined in Section 5.04.030A. If the parties are unable to agree on joint nominees within 90 calendar days of the expiration of the term of the member, or of a vacancy, in Position C, then either or both parties may submit nominees, and the board of supervisors, in its discretion, shall appoint the member from the list of nominees.
- D. In the event the board of supervisors is appointing more than one commissioner at a time, notwithstanding the provisions of section 5.04.110A, such appointments shall be for different periods of time in order to maintain the staggering of terms designed to preserve the commission's continuity.
- E. The board of supervisors creates the position of employee relations commission chairman emeritus to honor a member of the commission for distinguished service. The chairman emeritus shall have all the rights and duties of a member of the commission except that he may vote only when less than three commissioners vote on an issue.
- F. Appointments to the position of chairman emeritus of the employee relations commission may only be made by the board of supervisors upon the joint recommendation of the chief executive officer and a committee of employee organizations recognized by the county. Appointment to chairman emeritus requires that the nominee must have held the position of chairman of the Los Angeles County Employee Relations Commission for two consecutive terms.

(Ord. 2014-0044 § 1, 2014; Ord. 2013-0035 § 8, 2013; Ord. 2010-0039 § 1, 2010; Ord. 2006-0010 § 3, 2006; Ord. 85-0032 § 1(c)—(f), 1985; Ord. 12300 § 2, 1981; Ord. 9646 § 7(d), 1968.)

5.04.140 Employee relations commission—Meetings. The commission shall meet regularly at least once each month and shall meet at other times upon the call of the chairman. Two members shall constitute a quorum and the votes of two members are required for action; provided, that at meetings held for exclusive purpose of conducting mediation, or fact-finding, in connection with the resolution of disputes as provided in Section 5.04.250 of this chapter, or at meetings held for the exclusive purpose of investigating an unfair employee relations practice charge, that one member shall constitute a quorum and the vote of a majority of the members attending shall be required for action. The chairman of the commission shall be elected annually by the members of the commission. (Ord. 2013-0035 § 9, 2013: Ord. 10250 § 1, 1971: Ord. 9646 § 7(e), 1968.)

5.04.160 Employee relations commission—Powers and duties. The commission shall have the following duties and powers:

- A. To determine in disputed cases or otherwise to approve appropriate employee representation units;
- B. To arrange for and supervise the determination of certified employee representatives for appropriate units by means of elections, or such other method as the commission may approve with mutual consent of the parties involved. The results of such elections or other approved representation determination procedures shall be certified by the commission;
- C. To decide contested matters involving certification or decertification of employee organizations;
- D. To act upon requests for mediation, fact-finding or arbitration of disputes as provided in Sections 5.04.230 and 5.04.250 of this chapter;
- E. To investigate charges of unfair employee relations practices or violations of this chapter, and to take such action as the commission deems necessary to effectuate the policies of this chapter, including, but not limited to, the issuance of cease and desist orders;
- F. To establish and maintain an adequate list of impartial mediators and fact-finders, who shall have expertise in the field of employee relations, and to appoint same as provided for in Section 5.04.250 of this chapter;
- G. To conduct investigations, hear testimony, and take evidence under oath at hearings on any matter subject to its jurisdiction;
- H. To administer oaths and to require the attendance of witnesses and the production of books and papers;
- I. To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations;
- J. To certify, in appropriate cases, a council of employee organizations as the majority representative of employees in an employee representation unit and to decide issues relating to such certifications;
- K. To delegate to one or more commission members, employees or agents the powers or duties it deems proper;

L. To make recommendations concerning any necessary or desirable revisions in this chapter;

M. To take such other actions as the commission deems necessary to effectuate the policies of this chapter. (Ord. 2013-0035 § 10, 2013; Ord. 9646 § 7(g), 1968.)

5.04.170 Employee relations commission—Rules and procedures. The commission is a separate agency of the county and is authorized, following notice and hearing, to adopt reasonable rules and procedures not inconsistent with the provisions of Ordinance 9646 or any other county ordinance and which are necessary in the performance of its duties under this chapter. The commission shall appoint from civil service eligible lists such staff as it deems appropriate to fill those positions authorized by the board of supervisors. (Ord. 9646 § 7(h), 1968.)

5.04.180 Employee relations commission—Conflict of interest. If at any time any matter comes before the commission in which any member has any interest, direct or indirect, other than that of a taxpayer, said member shall publicly so state and his statement shall be recorded in the minutes of the meeting. He shall thereafter be disqualified from participating in the consideration of said matter. (Ord. 9646 § 7(j), 1968.)

5.04.190 Employee relations commission—Office, staff and supplies. The county shall provide appropriate office facilities, reference periodicals and books, equipment and supplies for the commission, and such staff as may be reasonably necessary to support the commission in carrying out its functions. The county also shall provide recording and transcription services for all public hearings conducted by the commission. (Ord. 2013-0035 § 11, 2013; Ord. 9646 § 7(i), 1968.)

5.04.200 Employee representation units—Establishment procedures. A. A petition for certification as the majority representative of employees in an appropriate employee representation unit may be filed with the commission by an employee organization. The chief executive officer may file such a petition with the commission in the event that two or more employee organizations formally claim to represent a majority of the employees in the same overlapping employee representation unit.

B. In the determination of appropriate employee representation units the following factors, among others, are to be considered:

1. Which unit will assure employees the fullest freedom in the exercise of rights granted under this chapter;
2. The community of interest of the employees;
3. The history of employee relations in the unit, among other employees of the county, and in similar public employment;
4. The effect of the unit on the efficient operation of the public service and sound employee relations;

5. Whether management officials at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the board of supervisors with respect to wages, hours and other terms and conditions of employment subject to negotiation;

6. The effect on the existing classification structure of dividing a single classification among two or more units.

C. In the establishment of employee representation units:

1. Professional employees shall not be included in a unit with nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit;

2. Supervisory employees shall not be included in a unit with the nonsupervisory employees unless such supervisory employees are in the same classification with nonsupervisory employees, provided, however, that in such event, said supervisory employees shall not participate in the management of an employee organization as an officer of the organization or represent it in dealings with management representatives when such activity would result in a conflict of interest or otherwise be incompatible with law or the official duties of the employees;

3. Management and confidential employees shall not be included in the same unit with nonmanagement or nonconfidential employees.

D. The commission shall conduct a hearing on each contested employee representation unit only after first giving the employee organization concerned and the chief administrative officer reasonable notice of the time and place of such hearing. The commission may require the parties concerned to submit such additional information or materials as it deems proper and necessary. The commission shall make the decision on the appropriate unit and issue the notice thereon.

E. Agreement of the parties involved on the scope of any employee representation unit is subject to the commission's concurrence that such unit is appropriate.

F. The commission shall determine any dispute concerning the relationship between existing employee representation units involving the addition of new classes to, or the deletion of classes from the salary ordinance. (Ord. 2013-0035 § 12, 2013; Ord. 85-0032 § 1(g), (h), 1985; Ord. 9646 § 8, 1968.)

5.04.210 Certification of employee organizations. Following notice and hearing, the commission shall adopt rules and regulations governing the certification and decertification of employee organizations. Only employee organizations that have been certified as majority representatives of appropriate employee representation units shall be entitled to negotiate on wages, hours, and other terms and conditions of employment for such units. This shall not preclude other employee organizations, or individual employees, from conferring with management representatives on employee relations matters of concern to them. (Ord. 9646 § 9, 1968.)

5.04.220 Activity of organizations on county property—Payroll deductions.

A. Subject to appeal to the commission, the chief executive officer shall have the right to promulgate rules and regulations governing the activity of certified employee organizations on county property, including procedures for conferring with management, use of bulletin boards and other county facilities, and solicitation of membership.

B. Payroll deduction may be made for membership dues to employee organizations in accordance with applicable law and county rules. (Ord. 2013-0035 § 13, 2013; Ord. 85-0032 § 1(i), 1985; Ord. 9646 § 10, 1968.)

5.04.230 Grievances. A. A grievance is any dispute concerning the interpretation or application of this chapter, or of a written agreement between the county and a certified employee organization, or of rules or regulations governing personnel practices or working conditions. A dispute over the terms of an initial or renewed collective agreement does not constitute a grievance.

B. The county and any certified employee organization may negotiate a procedure for handling grievances arising within the unit for which such organization has been certified.

C. The county and a certified employee organization may negotiate an agreement providing for final and binding arbitration of unresolved grievances, subject to such limitations on the scope of arbitrable grievances as the parties may deem appropriate or as may be required by law. Arbitrations conducted under such provisions shall be governed by the appropriate sections of the California Code of Civil Procedure. The fees and expenses of arbitrators shall be shared equally by the parties involved. The processes for these arbitrations shall be established by agreement of the parties. The commission shall establish rules for the requests for arbitration, and shall provide to the parties a list of arbitrators, from which they may select an arbitrator, from the California State Mediation and Conciliation Service, or other independent association of arbitrators that the parties jointly request. The commission shall provide such lists for any arbitration requests authorized by this chapter.

D. Nothing in this section shall be deemed to supersede the authority of the civil service commission. However, nothing contained herein shall preclude the civil service commission from adopting rules permitting it, in its discretion, to decline jurisdiction over appeals by employees who have expressly consented to have their grievances resolved under a negotiated grievance or arbitration procedure. (Ord. 2013-0035 § 14, 2013; Ord. 9646 § 11, 1968.)

5.04.240 Unfair employee relations practices designated—Corrective action.

A. It shall be an unfair employee relations practice for the county:

1. To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this chapter;

2. To dominate or interfere with the formation of any employee organizations or contribute financial support to it, provided that the county may permit the use of county facilities, make dues deductions, and permit employees who are officers or representatives of employee organizations to confer with county officials during working hours without loss of time or pay, subject to applicable regulations;

3. To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

B. It shall be an unfair employee relations practice for employee organizations or their representatives or members:

1. To interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this chapter;

2. To refuse to negotiate with county officials on negotiable matters, when the employee organization involved has been certified as the majority representative.

C. With respect to the impasse procedures set forth in Section 5.04.250 of this chapter, it shall be an unfair employee relations practice for either the county or a certified employee organization to fail or refuse to cooperate with the commission or with any mediators or fact-finders designated by it.

D. Charges of violations of this section or of this chapter, or of applicable rules or regulations may be initiated by a management representative, by a representative of any employee organization or by an individual employee or group of employees. Such charges shall be filed in writing with the commission. Each charge so filed shall be processed in accordance with the rules and regulations of the commission.

E. If the commission decides that the county has engaged in an unfair employee relations practice or had otherwise violated this chapter or any rule or regulation issued thereunder, the commission shall direct the county to take appropriate corrective action.

1. Such order shall be binding on the county, unless it requires action by the board of supervisors to make appropriations adjustments, transfers or revisions as provided by Section 29000 et seq. of the Government Code, or the adoption of a county ordinance by the board of supervisors. If the county fails to take action to comply with a binding order of the commission within such reasonable time as the commission may specify, an aggrieved party may petition the Superior Court for a writ of mandate to enforce the order.

2. If the commission's decision and order requires action by the board of supervisors as set forth above, the chief executive officer shall submit the appropriate documents and materials to the board of supervisors to enable it to take such action. If the board of supervisors does not take action within such reasonable time as the commission may specify, the commission shall so notify the other parties. An aggrieved party may then seek judicial relief from the Superior Court for enforcement of the commission's order to the extent that compliance with such order is required by state law, or by this chapter or any valid rule or regulation issued thereunder. Notwithstanding the failure of the board of supervi-

sors to take such action, the Superior Court shall have jurisdiction to exercise its independent judgment on the evidence in light of the whole record and in its discretion to take additional evidence and to issue a writ of mandamus enforcing the commission's order on a finding by the Superior Court that the county has committed an unfair employee relations practice in violation of state law, or this chapter.

F. If the decision is that an employee organization or its representatives or members have engaged in an unfair employee relations practice, or have otherwise violated this chapter or any rule or regulation issued thereunder, the commission shall direct the offending party to take appropriate corrective action. If compliance with the commission's decision is not obtained within the time specified by the commission, it shall so notify the chief executive officer who may then take appropriate action, subject, however, to appeal to the commission by the affected party. (Ord. 2013-0035 § 15, 2013; Ord. 85-0032 § 1(i), (j), 1985; Ord. 11155 § 1, 1975; Ord. 9646 § 12, 1968.)

5.04.250 Impasse resolution procedures. A. If the appropriate management representatives and the representatives of a certified employee organization reach an impasse, the matter may be submitted to the commission by either party.

B. The commission shall consider all requests for mediation, fact-finding or arbitration under this section. If the commission concludes that there has been insufficient effort between the parties to resolve the impasse, it may deny the request and remand the matter to the parties for further consideration. If the commission concludes that such further consideration would not result in settlement, it may in its discretion attempt to mediate the dispute, or it may appoint one or more mediators or fact-finders to assist the parties. The commission may institute mediation or fact-finding on its own motion, on initial/successor memorandum of understanding. The commission may invoke arbitration only by mutual consent of the parties. The processes for these arbitrations shall be established by agreement of the parties.

C. The following constitute the jurisdictional and procedural requirements for the implementation of mediation, fact-finding or arbitration on initial/successor memorandum of understanding:

1. Mediation, when requested by either party at interest or instituted by commission initiative, prior to fact-finding, is authorized in connection with all disputed matters. All mediation proceedings shall be private. The mediator or mediators shall prepare and file a confidential report with the commission.

2. Fact-finding, when requested by either party or instituted by commission initiative, is authorized in connection with all disputed matters. The recommendations of the fact-finder or fact-finders shall be limited to the issues originally referred for dispute settlement. Fact-finding proceedings shall be public

or private as determined by the commission. The fact-finding report shall be filed with the commission. The commission shall, within five calendar days, transmit copies thereof to the parties in interest and may, in its discretion, make the report public.

3. Request for fact-finding must be filed with the commission within 10 business days of impasse or the conclusion of mediation.

4. Arbitration of the terms of initial or renewed collective agreements shall be permitted only by written request of the parties to the dispute and the scope or such arbitration shall be subject to such limitations as may be set forth in said written request. The processes for these arbitrations shall be established by agreement of the parties.

D. The fees and expenses, if any, of mediators, fact-finders and arbitrators shall be shared equally by the parties involved. Standard rates of compensation for mediators and fact-finders shall be determined by the commission, subject to approval by the board of supervisors. The county shall furnish meeting space and recording and transcribing services when requested for such proceedings.

E. The following constitute the procedural requirements for the implementation of mediation and fact-finding on County Charter amendments or other matters subject to referendum:

1. All proposals under this section must be submitted to the other party at least 90 calendar days prior to the final date to place the measure on the ballot.

2. Negotiations shall begin within 10 calendar days of receipt of proposals, and shall be for a period necessary to reach agreement, but in no event longer than 90 calendar days from receipt of proposal.

3. In the event a tentative agreement is not reached, any party may request mediation and/or fact-finding. Any mediation procedures utilized within this process shall not exceed five calendar days, nor any fact-finding exceed 45 calendar days.

Mediation, when requested by either party at interest prior to fact-finding, is authorized in connection with all disputed matters. All mediation proceedings shall be private. The mediator or mediators shall prepare and file a confidential report with the commission.

4. All mediation and/or fact-finding proceedings, regarding resolution of disputes that arise in the course of negotiations regarding Charter amendments, shall not exceed the 90-day limit of subsection E2 of this section.

5. Fact-finding, when requested by either party, is authorized in connection with all disputed matters. The recommendations of the fact-finder or fact-finders shall be limited to the issues originally referred for dispute settlement. Fact-finding proceedings shall be public or private as determined by the commission. The fact-finding report shall be filed with the commission. The commission shall, within five calendar days, transmit copies thereof to the parties in interest and may, in its discretion, make the report public.

6. Following the receipt of the fact-finder's report, the parties may have an opportunity to attempt a final settlement of the matter, provided such opportunity is within 90 days from the receipt of the proposal.

7. The fees and expenses, if any, of mediators, fact-finders and arbitrators shall be shared equally by the parties involved. Standard rates of compensation for mediators and fact-finders shall be determined by the commission, subject to approval by the board of supervisors. The county shall furnish meeting space and recording and transcribing services when requested for such proceedings.

F. All other negotiations not included in subsections C and E: No time limit on length of total process; however, mediation is limited to five consecutive business days and, in the event fact-finding is requested by either party, such request must be filed within 10 business days of impasse or the conclusion of mediation, and said fact-finding is limited to 15 business days for hearing and 30 business days in which the report must be received by the parties, for a total of 45 business days for the fact-finding process.

1. The fees and expenses, if any, of mediators, fact-finders and arbitrators shall be shared equally by the parties involved. Standard rates of compensation for mediators and fact-finders shall be determined by the commission, subject to approval by the board of supervisors. The county shall furnish meeting space and recording and transcribing services when requested for such proceedings.

G. The parties may mutually agree to waive the time limits set forth above, but failure of a third party to act timely shall not stay the time limits.

H. If the legal requirement that Charter amendments be negotiated is eliminated, these impasse resolution procedures do not imply an obligation on the part of the county to continue to negotiate Charter amendments. (Ord. 2013-0035 § 16, 2013; Ord. 87-0205 § 1, 1987; Ord. 9646 § 13, 1968.)

**LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION**

**RULES AND REGULATIONS
AUGUST 1995 EDITION**

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RULE 1

SCOPE AND AUTHORITY

1.01 SCOPE

These Rules and Regulations (herein called "Rules") govern procedures before the Los Angeles County Employee Relations Commission (herein called "Commission"), a commission formed under the Employee Relations Ordinance No. 9646 (herein called "Ordinance"), adopted September 3, 1968, as now or hereafter amended.

1.02 AUTHORITY

Pursuant to Section 7(h) of the Ordinance the Commission does hereby prescribe and adopt these Rules which shall have the force and effect of law.

1.03 CONSTRUCTION OF RULES

The Rules shall be liberally construed to effectuate the purpose of the Ordinance and to secure the just and speedy determination of every proceeding.

1.04 PURPOSE

The Rules prescribe procedures and basic principles which the Commission will utilize in:

- a. Deciding questions concerning the appropriate unit for the purpose of recognition as the majority representative and related issues submitted for the Commission's consideration.
- b. Supervising elections to determine whether an employee organization is the choice of a majority of the employees in an appropriate unit as their representative, and certifying the results.
- c. Deciding complaints of alleged unfair employee relations practices and other alleged violations of the Ordinance or these Rules.
- d. Resolving disputes through the general procedure relating to mediation, fact-finding and arbitration pursuant to Sections 11 and 13 of the

Ordinance.

- e. Effectuating the purposes and policies of the Ordinance.

RULE 2

DEFINITIONS

2.01 GENERAL

Terms and definitions set forth in Section 3 of the Ordinance are hereby adopted and incorporated herein as if here fully set forth. When used in these Rules, the specific terms defined in said Section 3 shall have the meanings there set forth.

2.02 SPECIAL DEFINITIONS

- a. DAYS means calendar days exclusive of Saturdays, Sundays and holidays as specified in California Government Code Sections 6700 and 6701 (Good Friday shall not be deemed a holiday for the purposes of this section); provided, however, that references herein to periods of thirty (30) days or longer shall be defined to mean calendar days without exclusions. In the event the expiration of such time period falls on a Saturday, Sunday or holiday the next work day shall be considered as the date of expiration.
- b. SUBMIT TO THE COMMISSION or FILE WITH THE COMMISSION means actual delivery of the document, by

mail or by hand, to the Commission's Executive Secretary or a person designated by him or designated by the Commission.

- c. CHAIRMAN means a person elected Chairman of the Commission pursuant to Section 7(e) of the Ordinance and, where applicable, refers to the Acting Chairman.
- d. EXECUTIVE OFFICER means the person appointed by the Commission pursuant to applicable Civil Service Rules to the position of Executive Officer and, where applicable, refers to the Acting Executive Officer. Any reference in these rules to Executive Secretary shall read hereafter Executive Officer (2/28/75)
- e. COMMISSION'S OFFICIAL BULLETIN BOARD means the bulletin board established and located at a place formally designated by the Commission.
- f. COMMISSION'S OFFICIAL MAILING LIST means the list of individuals and employee organizations to whom the Executive Secretary sends official notices of the Commission.
- g. EMPLOYEE ORGANIZATION means a council of employee organizations where the latter term is applicable.
- h. THE SINGULAR TERM as used herein means plural where applicable.
- i. PROOF OF SERVICE means service made either in person

or by U.S. mail and attested to on the form provided by the Commission.

2.03 MASCULINE GENDER

As used herein, the masculine gender includes the feminine and the neuter.

2.04 SHALL AND MAY

As used herein, "shall" is a mandatory verb and "may" is a permissive verb.

2.05 SEVERABILITY

If any portion of these Rules is declared by a court of competent jurisdiction to be void, such decision shall not affect the validity of the remaining portions of these Rules.

2.06 AMENDMENTS

After giving at least ten (10) days' notice by posting on the Commission's Official Bulletin Board and by mailing to all parties on the Commission's Official Mailing List, the Commission may hold public hearings to consider adoption of amendments to these Rules or to adopting new rules.

2.07 EFFECTIVE DATE

All rules and amendments shall become effective immediately upon their adoption by the Commission, unless some later date is specified.

2.08 PUBLIC RECORDS

- a. The term "public record," as used in these Rules, shall include all rules, regulations, written statements of policy or interpretations formulated, adopted or used by the Commission, all petitions and complaints, decisions, opinions and orders, written testimony, minutes of meetings of the Commission and any other material on file in the office of the Commission unless accorded confidential treatment pursuant to law or the Rules of the Commission.
- b. Public records printed or reproduced by the Commission shall be given to parties of interest in the specific proceeding. Photocopies of public records shall be made and given to any person upon request and upon payment of the fees prescribed by law, and certified copies of extracts from public records shall also be given upon request and upon payment of the fees prescribed by law.
- c. Requests for public information, for permission to inspect officials records or for copies of public records shall be handled with due regard for the dispatch of the Commission's primary public duties.

2.09 APPEARANCES AND PRACTICE BEFORE THE COMMISSION

- a. An employee organization may be represented by a person duly designated and authorized by the employee organization; and the County may designate a person authorized to appear in its behalf.
- b. In any proceeding under these Rules, any public employee, employee organization or the County may be represented by counsel or any other authorized person.
- c. When a person acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of these Rules and the law he is authorized to represent the particular person in whose behalf he acts. The Commission may at any time require any person transacting business before the Commission in a representative capacity to show his authority to act in such capacity.

2.10 DOCKET

The Commission shall maintain a docket of all petitions, complaints and proceedings, assigning each a number.

2.11 REGISTRATION REQUIREMENTS OF EMPLOYEE ORGANIZATIONS

Each employee organization representing, or desiring to represent, County employees shall furnish to the Commission the information and material shown below. The Commission shall provide a copy of this information to the Department of Personnel.

- a. Official name, mailing address (for legal notice) and telephone number.
- b. Names and titles of officers.
- c. Names of local representatives and persons who are authorized to speak on behalf of its members.
- d. Optional designation of a person you desire to receive a copy of notices to your organization.
- e. A written statement that the organization includes employees of the County and has as one of its primary purposes representing such employees in their employment relations with the County and that said organization has no restriction on membership based on race, color, creed, sex, national origin, age or disability.
- f. A statement whether the organization is a chapter or local of, or affiliated with, a regional, state, national or international organization, and if so, the name and address of each such organization.

- g. Certified copies of constitution and bylaws.

When any of the above information is changed, the Commission shall be so notified in writing within thirty (30) days of the effective date of such change.

No Registration of an Employee Organization shall be effective until such time as the provisions of Rule 2.11(a) have been complied with.

Registration of Employee Organizations shall be subject to biannual review in accordance with this Rule and Rule 2.11(a) - (Added May 19, 1995)

2.11 A. PROCEDURE FOR REGISTRATION OF EMPLOYEE ORGANIZATIONS

- a. Upon the filing of an Employee Organization Registration, the Commission shall cause a true copy thereof to be posted on the Commissions Official Bulletin Board and/or docket, and true copies be given to the Director of Personnel and other affected management representatives and each of the employee organizations that appear to be interested in the group of employees for which the Registration is being filed. An accompanying notice shall state the date of filing of each Registration.

- b. Consideration of whether

such Registration meets the formal requirements of the Ordinance and these Rules will be set as a matter of business on the Commission's agenda at a regularly scheduled meeting promptly following receipt of the Employee Organization Registration.

c. The Commission in its sole discretion may grant the Registration, deny the Registration, or refer the matter to a public hearing under these Rules.

(Rule 2.11 adopted June 16, 1994)

2.12 TRANSCRIPTS OF PROCEEDINGS

An official reporter shall make the only official transcript of proceedings before the Commission.

2.13 MEMORANDUM OF UNDERSTANDING

Within sixty (60) days of the signing of a Memorandum of Understanding the County shall file a copy of such Memorandum of Understanding with the Commission. Copy of any amendment thereto shall also be furnished the Commission within thirty (30) days after such amendment has been adopted by the parties.

2.14 PROCEDURES

A party to a proceeding before the Commission must inform the

Commission of any proceeding brought before any court, commission, arbitrator or other public body relating to the subject matter of its case, including the date such action was filed. If such action is initiated at any state in the Employee Relations Commission proceedings subsequent to the filing of a petition or charge, the party must so inform the Commission forthwith in writing.

2.15 RECONSIDERATION

The Commission has the authority to review and reconsider any of its prior decisions and orders upon a showing of administrative or ministerial error on the part of the Commission.

RULE 3

ADMINISTRATION

3.01 DUTIES OF CHAIRMAN

The Chairman shall preside at all meetings of the Commission, act as spokesman for the Commission, and perform such other duties as shall be delegated to him by the Commission.

3.02 ACTING CHAIRMAN

In his absence, the Chairman shall designate one of the Commissioners to serve as Acting Chairman who shall have all the duties of Chairman. If no such designation has been made, the senior Commissioner shall

serve as Acting Chairman.

3.03 EXECUTIVE SECRETARY

The Executive Secretary shall be appointed by the Commission from the applicable Civil Service certified eligibility list and shall perform the duties prescribed by these Rules and other duties that the Commission may prescribe.

3.04 ACTING EXECUTIVE SECRETARY

- a. Whenever a vacancy occurs in the position of Executive Secretary, the Commission may appoint an Acting Executive Secretary to serve until such time as a new Executive Secretary is appointed.
- b. Whenever it is necessary for the Executive Secretary to be absent, he shall designate one of his assistants to act for him in his absence.

3.05 OFFICE

The office of the Commission is located at 374 Hall of Administration, 500 West Temple Street, Los Angeles, California 90012. Communications to the Commission should be so addressed, unless otherwise specifically directed.

RULE 4

MEETINGS

4.01 TYPES OF MEETINGS

The Commission may convene the following

types of meetings:

- a. Regular
- b. Special
- c. Executive

4.02 REGULAR MEETINGS

The Commission shall meet regularly at least once each month. Regular meetings shall be held on **Thursdays** at **9:00 a.m.** in the Commission Hearing Room, 374 Hall of Administration, 500 West Temple Street, Los Angeles, or at such other time or place as the Commission at a prior regular meeting may designate.

4.03 SPECIAL MEETINGS

A special meeting may be ordered at any time by the Chairman by delivering personally or by mailing at least 48 hours before the time of such meeting written notice to each member of the Commission. A copy of the notice shall also be posted on the Commission's Official Bulletin Board. The notice shall specify the time and place of the special meeting and the business to be transacted.

4.04 EXECUTIVE MEETINGS

During a regular or special meeting, the Commission may hold executive sessions for the purpose of deliberating on a decision to be reached based upon evidence introduced in a Commission proceeding.

4.05 PUBLIC MEETINGS

All meetings of the Commission shall be open to the public except as provided in Rule 4.04.

4.06 AGENDA

The Executive Officer shall, as directed by the Commission, prepare the Agenda for all meetings and post said Agenda on the Commission's Official Bulletin Board at least 24 hours before the time set for the meeting. In order to be included on an Agenda, all items must be received in writing by the Commission no later than the sixth day preceding the meeting. The Agenda for regular meetings will be mailed to all persons on the Commission's Official Mailing List the third day preceding the meeting.

4.07 MINUTES

The Executive Secretary shall record, or cause to be recorded, the minutes of all meetings of the Commission. The minutes shall include the time and place of each meeting, the names of the Commissioners present, all official acts of the Commission, and the votes of the Commissioners, except where the act is unanimous. The minutes shall be written and presented for correction and approval at the next regular meeting. When approved by the Commission, the minutes, or a true copy thereof, certified by the Executive Secretary, shall constitute the official minutes of the Commission and shall be open to public inspection. Copies of the minutes will be mailed to all certified employee organizations and the

Director of Personnel for the County.

4.08 RULES OF ORDER

Except as otherwise provided in these Rules, "Robert's Rules of Order" shall guide the Commission in its proceedings.

4.09 QUORUM

Two members of the Commission shall constitute a quorum and the concurrence of two members shall be necessary for action, provided that:

- a. At meetings held for the exclusive purpose of conducting mediation, fact-finding or arbitration in connection with the resolution of disputes as provided in Sections 11 and 13 of the Ordinance, one member shall constitute a quorum.
- b. When a Commissioner is designated as a hearing officer to conduct proceedings in an unfair employee relations practice charge (consistent with Rule 6.05), one member shall constitute a quorum.

4.10 SECONDS TO MOTIONS

Motions need not be seconded.

RULE 5

EMPLOYEE REPRESENTATION UNITS; CERTIFICATION OF EMPLOYEE ORGANIZATIONS

5.01 PETITIONS FOR UNIT DETERMINATION OR CERTIFICATION: FILING

- a. A Petition for Certification of an employee organization as the majority representative of an appropriate employee representation unit, or for the Determination of an Appropriate Employee Representation Unit (hereinafter called a Petition for Certification), may be filed by an employee organization.
- b. Such a petition may also be filed by the Director of Personnel in the event that two or more employee organizations formally claim to represent a majority of the employees in the same or overlapping employee representation units.
- c. All petitions shall be in writing on forms provided by the Commission, shall be signed by a duly authorized representative and shall contain a declaration by the person signing under penalty of perjury that its contents are true and correct to the best of his knowledge and belief. The original and eight (8) copies shall be filed with the Commission.
- d. A Petition for Certification may be withdrawn only with the consent of the Commission.

5.02 CONTENTS

A Petition for Certification shall contain:

- (1) The name, address and telephone number of the petitioner and of one designated representative

authorized to receive notices or requests for information.

- (2) The name and address of the County Department, Board, Commission or other body in which or by whom the affected employees are employed and the name, address and telephone number of a management representative thereof.

- (3) A description of the employee representation unit claimed to be appropriate, the estimated number of employees in said unit, the classifications of employees therein, and the estimated number of employees in each classification. Where the claimed unit includes both professional employees and nonprofessional employees, a separate petition shall be filed for the professional employees. If all positions in any classification are not proposed to be included in the unit, lists or descriptions of the positions to be included and excluded shall be set forth.

- (4) The names, addresses and telephone numbers of employee organizations other than petitioner who, to petitioner's best knowledge and belief, claim to represent any of the employees in the allegedly appropriate unit and a brief description, if known, of the written agreements, if any, covering any employee in such unit.

- (5) Any other relevant facts.

5.03 PROOF OF INTEREST AND INTERVENORS

- a. At the time of filing a petition, a petitioning employee organization shall submit to the Commission evidence that at least thirty percent (30%) of the employees in the claimed unit desire petitioner to represent them in their employment relations with the County. If such evidence is not timely submitted, the Commission may dismiss the petition. Such evidence may include copies of currently effective membership cards; a list of employees authorizing payroll deductions for membership dues; authorization cards or an authorization statement containing the printed name of employee and his signature executed within ninety (90) days preceding the filing date of the petition by the employee organization.
- b. An employee organization which submits to the Commission like evidence that at least ten percent (10%) of the employees in the unit claimed to be appropriate desire such organization to represent them for the purpose of such employment relations may intervene in the proceedings, attend and participate in all conferences and any hearing that may be held, and, if approved by the Commission,

appear on the ballot of such election as may be ordered by the Commission in the proceedings. Such evidence shall be submitted within ten (10) days after the posting of the Commission's notice of the filing of the original petition; if it is not timely submitted, the Commission may deny the intervention. However, the Commission may in its discretion receive argument from an employee organization on the appropriateness of a claimed unit even though that organization has not qualified as an intervenor.

- c. The petitioning employee organization and any intervening employee organization which has complied with the requirements in a. and b. above, as well as the Director of Personnel, may file a Statement of Appearance with the Commission no later than the sixth working day prior to the date set for hearing the petition. The Commission will furnish copies of appearance statements to all parties of interest prior to the hearing in the matter.

5.04 PETITIONS FOR DECERTIFICATION: FILING

- a. A Petition for Decertification alleging that a certified employee organization is no longer the majority representative of the employees in an appropriate employee

representation unit may be filed by an employee organization, a single employee, or a group of employees or their representative. The Petition for Decertification shall be in writing and signed, and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of his knowledge and belief. The original and eight (8) copies shall be filed with the Commission.

b. The Petition for Decertification shall contain:

- (1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for information.
- (2) The name and address of the certified employee organization.
- (3) The name and address of the County Department, Board, Commission, or other body involved.
- (4) A description of the employee representation unit involved and the approximate number of employees therein.
- (5) The name, address and telephone number of any employee organization, other than the certified

employee organization, who to petitioner's best knowledge and belief claims to represent any employees in the employee representation unit.

(6) The expiration date of any written agreement covering employees in the unit.

(7) An allegation that the certified employee organization no longer is the majority representative of the employees in such unit.

(8) Any other relevant facts.

c. At the time of filing a Petition for Decertification, the petitioner shall submit to the Commission evidence that at least thirty percent (30%) of the employee in the unit do not desire to be represented in their employment relations by the certified employee organization. Such statement shall contain the printed name of employee and his signature executed within ninety (90) days preceding the filing date of the petition. If such evidence is not timely submitted, the Commission may dismiss the petition.

5.04.1 PETITIONS FOR SEVERANCE: FILING

a. A Petition for Severance requesting the removal of a specific class or classes from an established representation

unit may be filed by a single employee or a group of employees. Said employee(s) must be an incumbent(s) in the class or classes for which severance is requested.

b. The Petition for Severance shall be in writing and signed, and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of his knowledge and belief. The original and eight (8) copies shall be filed with the Commission.

c. The Petition for Severance shall contain:

- (1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for information.
- (2) The name and address of the certified employee organization.
- (3) The name and address of the County Department, Board, Commission, or other body involved.
- (4) A list of the class or classes for which severance is requested and the approximate number of employees therein.
- (5) A brief statement setting forth the basis for the severance request.
- (6) The expiration date of any written agreement covering employees in

the unit.

d. At the time of filing a Petition for Severance, the petitioner shall submit to the Commission evidence that at least fifty percent (50%) of the employees in the class or classes for which severance is requested support such request. Such statement shall contain the printed name of employee and his signature executed within ninety (90) days preceding the filing date of the petition. If such evidence is not timely submitted, the Commission may dismiss the petition.

e. The certified employee organization and/or the Chief Administrative Officer may file a statement setting forth support of or opposition to the petition. Such response shall be filed with the Commission within ten (10) days after service of the notice of filing.

5.05 CONTRACT BAR: TIME TO FILE

A valid written agreement between the County and a certified employee organization governing the wages, hours and/or other terms and conditions of employment of employees in an appropriate employee representation unit shall bar the filing of a Petition for Severance, a Petition for Certification or a Petition for Decertification of a majority representative for such unit during the term of such written agreement, not exceeding two years, unless the

life of the certification of such organization is altered by the Commission pursuant to Rule 5.34. A Petition for Severance, Petition for Certification or a Petition for Decertification may be filed only during a period beginning not earlier than 150 days and ending not later than 90 days before the expiration date of any such written agreement. If the agreement is for an indefinite term or for a term longer than two years, a Petition for Severance, a Petition for Certification or a Petition for Decertification may be filed within the period of 150 days and no later than 90 days before the second anniversary date of the agreement or any subsequent annual anniversary date.

5.06 NOTICE OF FILING

- a. Upon the filing of a Petition for Severance, a Petition for Certification or a Petition for Decertification, the Commission shall cause a true copy thereof to be posted on the Commission's Official Bulletin Board and/or docket, and true copies be given to the Director of Personnel and other affected management representatives and each of the employee organizations that appear to be interested in the unit for which the petition is filed. An accompanying notice shall state the date of filing of each petition.
- b. Consideration of:
 - (1) Whether a petition meets the formal requirements

of the Ordinance and of these Rules.

- (2) Whether the proof of interest of the petitioner is sufficient will be set as a matter of business on the Commission's agenda at a regularly scheduled Commission meeting promptly following the last date set for receipt of such proof of interest. The determination whether such proof is satisfactory shall be handled administratively by the Commission, and shall not be subject to question thereafter.
- c. If the Commission determines that a petition is sufficient as to form and that the proof of interest of the petitioner is also sufficient, the Commission may set the matter for public hearing. The Commission, however, reserves the right to make such other disposition of a Petition for Severance as it deems appropriate following a review of any statements submitted pursuant to Rule 5.04.1(e). If a public hearing is ordered by the Commission, at least ten (10) days prior written notice of the time and place of such hearing, the interested parties who may appear and the matters to be determined shall be given by the Commission to the Director of Personnel, affected management representatives,

and each of the interested employee organizations.

- d. During the period of ten (10) days preceding such hearing, the department head of each department with employees in the classes contained in the petition shall post in conspicuous places in the department copies of notices provided by the Commission noting the petition and the hearing ordered by the Commission.

5.07 HEARINGS

- a. The Commission shall determine whether a hearing shall be conducted by the full Commission or by a hearing officer. For purposes of this Rule, the term "hearing officer" shall mean a single Commission member, an individual from the Commission's current panel of neutrals, or the Commission's Executive Officer. Prior to such determination, the Commission may consider the timely request of any interested party on the question of whether the hearing should be conducted by the full Commission or by a hearing officer. If the Commission determines that a hearing shall be conducted by a hearing officer, it shall also designate the hearing officer who shall conduct the hearing.
- b. The Commission may conduct a prehearing conference with

the interested parties prior to a hearing for purposes of clarifying issues, obtaining stipulations, or taking any other action to expedite the hearing. In the event the Commission has assigned the conduct of the hearing to a hearing officer, the hearing officer shall also conduct the prehearing conference.

- c. Hearings shall be limited to matters noticed for hearing which relate to representation, including determination of an appropriate employee representation unit, the certification or decertification of a majority representative, the propriety of deleting or adding certain employee classes to an existing unit, the holding of an election or other means of ascertaining representation. Interested parties to any such hearing include those parties specified by the Commission in its Notice of Hearing; provided, however, that the Director of Personnel shall have the right to be a party to any hearing involving questions of unit determination or certification. In appropriate cases the Commission may consolidate for hearing two or more representation proceedings, or one or more representation proceedings and unfair employee relations practice proceedings, or proceedings involving alleged violations of the Ordinance.
- d. In the event a hearing is

conducted by a hearing officer rather than the full Commission, the hearing officer shall prepare a written report upon the conclusion of the hearing setting forth findings and recommendations relative to the matters under consideration during the hearing. Copies of said findings and recommendations shall promptly be served upon all participating parties. Within ten (10) days of the service of such findings and recommendations, any of the participating parties may file with the Commission in writing a challenge to any or all of either the findings or recommendations. Additionally, copies of written challenges must be promptly served upon all other participating parties. The consideration of such challenge shall be set as an item for business on the regular agenda of the Commission. The Commission may in its discretion receive argument from the participating parties concerning said challenges. In this event, the Commission will decide whether

argument shall be oral or written, or both. In the event no challenge is made by the participating parties, the Commission shall proceed to direct a secret ballot election, dismiss the petition or take other appropriate action. In the event of a challenge, the Commission shall consider it and the responses, if any, and proceed to determine all matters in dispute including, but not limited to, the scope of the appropriate employee representation unit or units, whether to direct a secret ballot election, dismiss the petition or take other appropriate action.

- e. If the Commission orders an election to be held, it shall determine which parties shall appear on the ballot, the form of the ballot, the employees eligible to vote, the rules governing the election, and the date, time, and place of the election. Elections shall be held within thirty (30) days of such order; provided, however, that the time for an election may be extended by the Commission for good cause. The date, time, and place of elections should be set, insofar as reasonably possible, to allow the maximum number of employees to vote.

- f. The Commission promptly shall issue a written notice of its decision to all interested parties including the Director of Personnel.

5.10 ELECTIONS: GENERAL

- a. All elections ordered by the Commission shall be by secret ballot and shall be conducted under supervision of the Commission.
- b. Eligible voters shall be those employees in the unit who were employed during the payroll period immediately preceding the date the order for an election was issued by the Commission (unless the parties mutually agree to another date, and such date is confirmed by the Commission), including those who did not work during such period because of illness, vacation or authorized leave of absence and who are employed by the County in the same unit on the date of the election.
- c. The Director of Personnel shall provide to the Commission employee lists equal in number to the number of employee organizations on the ballot plus two. The list shall contain the names in alphabetical order of all the employees in the unit who are eligible to vote; employee numbers; job titles; and departments. The Commission shall distribute a copy of the list to each employee organization on the ballot at least fifteen (15) days

before the election. When necessary, the Executive Secretary will endeavor to seek the parties' agreement on the contents of the eligibility list. This list shall then become the official eligibility list. Where no agreement is reached on one or more of the employees listed, such employee will be advised of the right to cast a challenged ballot.

- d. Every ballot in an initial election shall contain a choice of "None of the above representatives," in addition to the names of the employee organizations which the Commission has directed to be placed on the ballot.
- e. The Commission may conduct an election in whole or in part by mail ballot if, in the Commission's sole discretion, the mail ballot procedure is deemed more appropriate. If an election by mail ballot is ordered, the Commission will at that time establish rules and procedures to guard against fraud, mistake, ineligible voting, and the like.
- f. No election shall be conducted in any employee representation unit or any subdivisions thereof within which in the preceding twelve (12) month period an election had been held; except upon consent of the parties and upon order of the Commission after a showing of good cause.

5.11 NOTICE OF ELECTION

Prior to the election, the Commission will cause to be prepared a Notice of Election specifying the date and place thereof, the hours the polls will be open, the classifications of employees in the appropriate unit in which the election is to be conducted, the rules concerning eligibility to vote, a sample ballot, and such additional information and instructions as the Commission may determine. Copies of the notice and sample ballot will be sent to the employee organizations appearing on the ballot and to the Director of Personnel, who shall cause them to be posted on the bulletin boards in work areas of the affected employees and other appropriate places as directed by the Commission for at least ten (10) calendar days before the date of the election. This posting requirement may be modified by mutual agreement of the parties upon approval of the Commission, or it may be modified by the Commission.

5.12 ADMINISTRATION

- a. All elections shall be conducted under the Commission's Rules and under the Supervision of the Commission. The Commission will utilize to the greatest extent it deems feasible the services of existing agencies of state or local government to administer elections as the Commission's election agents.
- b. The Commission or its election agent shall appoint one Election Officer to conduct voting at each voting place.

The Commission may also appoint one or more aides to assist the Election Officer in his duties.

- c. The duties of the Election Officer and his aides shall include:
 - (1) Officially opening and closing the voting place.
 - (2) Identifying and determining eligibility of each voter.
 - (3) Challenging or receiving challenges of eligibility from observers.
 - (4) Tallying the ballots.
 - (5) Maintaining the efficient and orderly operation of the voting place.
- d. The Election Officer and his aides shall wear identification badges at all times during their presence at the voting place.

5.13 OBSERVERS

Employee organizations who are parties to an election may each designate an observer or, with the approval of the Commission, a larger number at each voting place to observe that ballots are properly cast and votes properly counted. County management may have observers at each voting place who do not exceed in number the total number of employee organization observers authorized for such voting place. Names of observers shall be presented to the Election Officer at least three (3) days before the election. Observers shall be subject to such reasonable limitations as the Election Officer may prescribe. They

shall wear identification badges and shall refrain from electioneering or attempting in any way to influence any voter at or near the voting place.

5.14 VOTING PROCEDURE

- a. There shall be no electioneering within 100 feet of the polling place.
- b. Prior to receiving a ballot from the Election Officer or aide:
 - (1) Each voter shall be asked to clearly identify himself.
 - (2) The name of the voter shall be located upon the roster of eligible employees.
 - (3) Observers shall be given an opportunity to verify the identification of the voter.
 - (4) The voter shall sign opposite his name on the roster.
- c. Each voter shall then take the ballot to a vacant polling booth and mark the ballot appropriately. He shall not sign the ballot. Under scrutiny of the Election Officer or his aide, the voter shall deposit the ballot in the ballot box. The ballot shall be locked or sealed at all times during the election and shall not be opened until the close of the election.
- d. An eligible voter who is on authorized leave of absence, vacation, or whose official duties for the County prevent him from being present at his prescribed voting place shall be

entitled to submit his ballot by United States mail. A ballot, along with an addressed envelope, will be mailed upon his prior written request to each such eligible voter at least ten (10) calendar days in advance of the election. When returning his marked ballot, the voter shall sign his name and indicate his employee number in the spaces provided on the detachable stub of the return envelope. All mail ballots must be returned by 5:00 p.m. of the last day of the election and will be counted as promptly thereafter as possible, but not later than five (5) days thereafter. If duly postmarked ballots are received subsequent to the last day of the election and within the five-day period allowed for the count, and should those ballots affect the results of the election they will be counted; otherwise, not.

- e. If a voter inadvertently spoils a ballot he may return it to the Election Officer or his designated aide who shall deliver another ballot to him. The Election Officer or his designated aide shall preserve the spoiled ballot for the time of counting ballots.

5.15 CHALLENGES

- a. An authorized observer, the Commission or the Commission's Election Officer, prior to the time the voter casts his ballot, may challenge for

good cause the eligibility of any person to vote in the election. Challenges made after the ballot has been placed in the ballot box will not be considered. A person challenged as an ineligible voter shall be permitted to vote in secret.

- b. At the time the Election Officer gives the challenged voter a ballot, he shall also hand him an envelope on the stub of which is written the word "challenged," the voters name, his employee number, the challenger's name, and the reason for the challenge. The voter shall then take this envelope and his ballot to the voting area. After marking the ballot, he shall place the ballot in the envelope and seal the envelope before leaving the voting area. such sealed envelope shall then be delivered to the Election Officer or his designated aide who shall place the sealed envelope in the ballot box.
- c. When the ballots are counted, the challenged ballots shall be separated and shall not be counted. In situations where the number of challenged ballots is not sufficient to affect the outcome of the election, the challenges will not be considered. If the number of challenged ballots is sufficient to affect the outcome of the election, the Commission's

election representative shall review the information furnished by the Election Officer or his aide, along with any other pertinent information, and make a report to the Commission. The Commission shall overrule or sustain the challenges.

- d. If a challenge is sustained, the ballot so challenged will not be opened. If a challenge is overruled, the Commission shall direct that the challenged ballot be opened and counted with the unchallenged ballots and that a revised Tally of Ballots be prepared.
- e. Prior to the counting of ballots, any challenger may withdraw his challenge. If a challenge is so withdrawn, the ballot shall be removed from the challenge envelope and mixed with the other unchallenged ballots in the ballot box.

5.16 COUNTING BALLOTS

- a. Only the Election Officer or his aide shall handle ballots. All ballots counted and uncounted shall be kept in view of the observers at all times and until the Tally of Ballots is finally signed.
- b. The Election Officer shall open the ballot box, remove and spread open the ballots stacking them in one pile regardless of marking. If more than one Election Officer or aide is participating in the count, each official may open ballots.

Each official, however, shall stack his ballots in one pile regardless of marking. The Election Officer shall then take each stack of opened ballots and combine them into one pile. The Election Officer shall then sort the ballots into piles according to the preferences shown on the ballot. He shall then count and tally the ballots cast for each choice in lots of 50, laying the ballots face up so that observers may inspect the marks. As the count of each 50 is finished, the observers shall be asked if they wish a recount. Each lot of 50 shall be bound with a rubber band or gummed paper with the contents indicated on the back of the package. Separate piles for each marking shall be maintained. The count shall continue in this manner until the ballots are exhausted.

- c. The validity of a ballot may be challenged on the grounds that it is torn, defaced, marked in an ambiguous fashion, or is otherwise defective. The Commission's election representative will determine whether the objective intent of the voter in marking the ballot can be reasonably determined

and, if so, determine it. If such intent cannot be reasonably determined or if the ballot directly or indirectly identifies the voter, the ballot shall be declared void and it shall be preserved.

- d. When the count is completed, the Election Officer shall total his record sheet. The bundles of ballots shall then be checked with the totals. If there is agreement, the Election Officer shall enter the final count on the Tally of Ballots, sign it, and have it signed by the observers. Upon completion of the vote count, all voted, void and unused ballots shall be sealed in separate envelopes on the outside of each of which is noted the contents of that envelope. In two other envelopes, an election official shall seal all tally sheets and the roster of voters. These envelopes and the official Tally of Ballots shall be delivered without delay by the Election Officer to the Commission.
- e. The Commission or its duly authorized representatives shall count the mail-in ballots. The name on the stub of each envelope shall be checked against a roster of eligible voters. The stub shall then be removed and destroyed. Next, the ballots shall be removed from the envelopes and mixed together before counting. The counting will take place in the manner specified hereinabove. The final count shall be entered

on a special Tally of Mail-In Ballots.

- f. After counting the ballots submitted by mail, the Commission or its duly authorized representatives shall take the Tallies of Ballots submitted by all voting places along with the Tally of Mail-In Ballots and compute the total number of votes for each employee organization and the "None of the above representatives" alternatives. Each party to the election, including the affected County management representatives, may designate one observer to attend the count of mail-in-ballots and the final computation of results. The names of these observers shall be presented to the Commission at least three (3) days in advance of the election.

5.17 RUN-OFF ELECTIONS

A run-off election shall be conducted within fifteen (15) days of the initial election, as specified by the Commission, when an election in which the ballot provided for three or more choices (including "None of the above representatives") results in no choice receiving a majority of the valid ballots cast, and there are no valid objections to the election. The ballot in the run-off election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast. The Commission may in its discretion maintain the same

eligibility date or establish a new eligibility date in a run-off election. Only one run-off election shall be conducted. All rules and procedures governing an initial election shall apply to a run-off election.

5.18 REPORT OF RESULTS

The Commission shall promptly furnish the results of an election or run-off election to all interested parties including affected County management and employee organizations.

5.19 OBJECTIONS

- a. Within seven (7) days after a report of the ballot count has been furnished, any party to the election may file with the Commission objections to the election or conduct affecting the results of the election or the report of the count. The grounds for valid objections shall include, but are not limited to, prohibited election procedures, false statements calculated to mislead voters, electioneering at or near voting places, or intimidation or coercion of voters. The objections shall be in writing, shall contain a brief statement of the facts upon which objections are based and shall be signed. A true copy shall be served on all other interested parties. The original and five (5) copies (with a separate statement that such copies have been served on the other

parties) shall be filed with the Commission.

- b. The Commission may direct a hearing or otherwise investigate and make its determination respecting the objections.

5.25 FILING OF STIPULATIONS

- a. Subject to the approval of the Commission, a Stipulation to Determine a Majority Representative may be filed with the Commission by the Director of Personnel and one or more employee organizations.
- b. The stipulation shall be either:
 - (1) To initiate an election; or
 - (2) To conduct a count or check of currently effective membership cards; current payroll deductions for membership dues; authorization cards or a signed petition (hereinafter called "card count") executed within ninety (90) days preceding the filing of a Petition for Certification, or preceding the stipulation if no petition for certification was filed.

The stipulation may be filed either in the absence of any Petition for Certification or following the filing of such a petition but before an election has been directed. The Commission shall give notice of the filing of such stipulation to all other interested parties in the manner provided in

Rule 5.06a. No such stipulation shall bar an employee organization, not a party to the stipulation, from intervening in the proceedings.

5.26 CONTENTS OF STIPULATION

- a. An original and five (5) copies of the stipulation shall be signed and verified by all parties, and filed with the Commission.
- b. A stipulation shall include:
 - (1) The names, addresses and telephone numbers of the parties on whose behalf the election or card count is stipulated.
 - (2) An agreement that a hearing will be waived and that the Commission will conduct an election (or a card count) to determine the majority representative.
 - (3) A description of the employee representation unit agreed by the parties to be appropriate and a statement whether the unit includes (i) both professional employees and nonprofessional employees or (ii) both supervisory and nonsupervisory employees and, if so, whether they are in the same classification, or (iii) management and confidential employees together with nonmanagement or nonconfidential

- employees.
- (4) A complete list of the employees, by classification, agreed upon by the parties as being included in the employee representation unit and eligible to vote (or to sign a valid authorization card or similar document).
 - (5) Suggested days of the week, date, time and place for the conduct of the election (or count of cards).
 - (6) A statement that any questions arising about the conduct or results of the election (or card count) shall be processed according to the Commission's procedures following an election directed as a result of a hearing.
 - (7) The names, addresses and telephone numbers of any other employee organizations who, to the best knowledge and belief of the parties, claim to represent any of the employees in the unit agreed by the parties to be appropriate, and a brief description of the written agreements, if any, covering any employees in such unit.
 - (8) A statement, to the parties' best knowledge and belief, whether any employees are employed

by the County outside the unit agreed by the parties to be appropriate but in the same classification or classifications proposed by the parties to be included in such unit; and, if so, (i) the title of the classification, (ii) the approximate number of employees outside the unit who are employed in each classification, (iii) the name and address of the County Department, Board, Commission or other management body by whom employees are employed, (iv) the names, addresses and telephone numbers of any other employee organizations who claim to represent any of such employees, and (v) a brief description of the written agreements, if any, covering such employees.

5.27 ACTION ON STIPULATION

The Commission shall notify the parties in writing of its granting or withholding of approval of the stipulation. If it grants approval, the Commission will order an election or conduct a card count, as the case may be, in accordance with its election procedures provided in these Rules, except to the extent those procedures must be reasonably modified in the case of a card count.

5.30 CERTIFICATION FOLLOWING CARD COUNT

- a. Although the Commission's policy will normally be to order a secret ballot election to determine whether an employee organization represents a majority of employee in an appropriate employee representation unit, the Commission may investigate questions concerning representation by means of informal hearings. It may determine majority representation status on the basis of an authorization card check or similar basis; but County management or any employee organization party to a representation proceeding shall be entitled as a matter of right to a secret ballot election upon written request therefor provided that the employee organization has qualified as a petitioner or intervenor under the Ordinance and these Rules.
- b. In the event all parties agree to a card check or similar method of ascertaining majority representation status, the Commission may, but need not, use that method to determine the wishes of employees.
- c. Upon completion of its investigation, the Commission shall make a determination of the appropriate employee representation unit and, if appropriate, shall certify the name of the employee

organization, if any, that has been designated as their representative by a majority of the employees in the appropriate employee representation unit.

5.31 CERTIFICATION FOLLOWING ELECTION

Notwithstanding any other provision of these Rules, an employee organization shall be eligible for certification following an election or run-off election only if either:

- (1) That employee organization has received the vote of a numerical majority of all the eligible employees in the employee representation unit in which the election was held (i.e., 50% plus one of the votes of all eligible employees), or,
- (2) Whenever at least sixty percent (60%) of the total number of eligible employees in the unit have voted in an election or run-off election, an employee organization may be eligible for certification if it has received a numerical majority of all votes cast in the election (i.e., 50% plus one of the votes cast).

(For example: If 100 employees are eligible to vote in an election, but only 59 actually vote, an employee organization must obtain 51 votes for

certification. If 90 employees vote, an employee organization must receive at least 46 votes to be certified.)

5.32 NOTICE OF CERTIFICATION

If the Commission certifies an employee organization pursuant to Rule 5.30, or if following an election the Commission acts to certify an employee organization pursuant to Rule 5.31, the Commission promptly shall notify in writing the employee organization certified, all other affected employee organizations, the Director of Personnel, the members of the Board of Supervisors and all County Departments, Boards, Commissions or other management units which have employees within the affected employee representation units.

5.33 APPEALS

Within five (5) days after the issuance of a Notice of Certification by the Commission, any interested party may file a motion for rehearing or reconsideration, setting forth the specific grounds therefor. The motion shall be accompanied by five (5) copies and a separate statement that it has been served on all parties appearing in the proceedings, naming them, and the Director of Personnel. Any of such parties may file a written response to such motion within five (5) days of receipt of a copy thereof. The Commission may, but need not, hold a hearing on such motion. Thereafter, the Commission shall in writing affirm, modify or set aside its

previous determination and that action shall be considered final.

5.34 CERTIFICATION LIFE AND AMENDMENTS TO A CERTIFICATION

- a. When an employee organization has been certified by the Commission, such certification shall continue in effect for a minimum of one year. Where unusual or extraordinary circumstances appear to the Commission to require it, the Commission may modify or suspend, or may shorten or extend the life of any certification.
- b. In the event of the addition of new classes to, or the deletion of classes from, the Salary Ordinance of the County, either an affected certified employee organization or the Director of Personnel may, during the life of the certification, request the Commission to add to or delete such classes or portions thereof, from an established employee representation unit. The Commission may set such matter for hearing.
- c. Where the Director of Personnel and an affected certified employee organization agree that additional classes of employees not currently in an employee representation unit be added to a certified unit, a joint written request should be filed with the Executive Secretary of the Commission. Unless the Commission shall

determine otherwise, such request shall contain the following:

- (1) Identification of the employee representation unit involved.
- (2) A list of the classes to be added to the unit.
- (3) The number of employees in each such class.
- (4) A short statement of the facts indicating the reason for the request, such as newly created classes, classes overlooked at the time the certification was issued, or other circumstances which require the requested amendment.
- (5) A statement that the parties agree to the conduct of a card check in lieu of an election, if in fact they do so agree.
- (6) A list of names of employees to be added to the existing employee representation unit together with properly executed applications for membership in the employee organization or statements authorizing the employee organization to act as the employees' representative.

d. Where there is no opposition to the requested amendment, the Commission shall grant the motion providing it appears

that it is appropriate to add the class involved to the employee representation unit and the employee organization has demonstrated its majority status among the employees sought to be included by submitting properly worded authorization cards signed within the prior ninety (90) days. The Commission, however, reserves the right to make such other disposition of the request as it deems appropriate, including, but not limited to the conduct of a secret ballot election.

5.35 WAIVER OF TIME REQUIREMENTS

The Commission may, on its own motion or on motion of any party showing good cause, modify or waive any of the specific time requirements set forth in this Rule 5.

RULE 6

UNFAIR EMPLOYEE RELATIONS PRACTICES

6.01 FILING

A Charge that the County, an employee organization or its representatives or members, individually or in concert with others, have engaged in or are engaging in any unfair employee relations practice as defined in the Ordinance, or otherwise have violated or are violating the Ordinance or Rules and Regulations issued thereunder, may

be: filed by a management representative, by a representative of any employee organization, or by an individual employee or group of employees. Such charge shall be filed in writing on a form provided by the Commission, shall be signed, and shall contain a declaration by the person signing, under penalty of perjury, that its contents are true and correct to the best of his knowledge and belief.

A charge shall be deemed untimely and subject to dismissal if filed with the Commission at its office in excess of one hundred eighty (180) days following the occurrence of the alleged act or acts or which the charge is based, or the date on which the charging party knew or should have known of said conduct. This Rule (6.01) shall not be subject to the waiver of time requirements of Rule 6.13.

6.02 CONTENTS OF CHARGE

Such charge against the County pursuant to Section 12(a) of the Ordinance, or against employee organizations of their representatives or members pursuant to Section 12(b) of the Ordinance shall contain, insofar as is known, the following information.

- a. The full name, address, and affiliation, if any, of the charging party, and the title of any representative filing the charge.
- b. The full name and address of each party against whom the charge is made (respondent).

- c. A clear and concise statement of the acts constituting the charge and of the sections (including subsections) of the Ordinance or Rules and Regulations alleged to have been violated.

6.03 SERVICE OF CHARGE

Upon filing a charge, the charging party shall be responsible for service of a copy thereof, within three (3) days, upon the party against whom such charge is made. Proof of service satisfactory to the Commission shall be furnished.

6.04 P R E L I M I N A R Y INVESTIGATION OF CHARGE

Upon the filing of a charge in accordance with these Rules, the Executive Officer shall expeditiously conduct an investigation and report thereon to the Commission. The report shall remain confidential.

The charging party must provide the Executive Officer with facts sufficient to give reasonable cause to believe that an unfair practice may have occurred.

6.04.1 DEFERRAL TO ARBITRATION

- a. If the subject matter of an unfair employee relations practice charge involves the interpretation of memorandum of understanding provisions, the Commission may, on the motion of any party to the

charge or on its own motion, defer further processing of the charge until the grievance procedure has been exhausted and the arbitrator's award has been received.

- b. Upon receipt of the arbitrator's award, the charging party shall transmit a copy of the award to the Commission, and shall advise the Commission in writing that it wishes either to proceed with the unfair employee relations practice charge or to withdraw it. A copy of such notice shall be served simultaneously on the respondent and proof thereof filed with the Commission.
- c. If the charging party advises the Commission that it wishes to further process the unfair employee relations practice charge, or upon the Commission's own motion, the Commission shall review the award of the arbitrator. If in the opinion of the Commission the arbitrator's award is not repugnant to the Employee Relations Ordinance, the Commission shall then dismiss the charge without further processing.

6.05 COMMISSION ACTION

The Commission shall review the preliminary investigation report. At its next regular meeting it may:

- (1) Direct that there be further investigation;

- (2) Dismiss the charge in whole or in part;
- (3) Process the charge as filed, or amended, by directing the issuance of a notice of hearing; or
- (4) Take such other action as it deems appropriate.

The Notice of Hearing shall have a copy of the charge attached and shall be served upon those parties named in the charge or otherwise admitted by the consent of the Commission or its designee. The notice shall designate the place of hearing at a time not less than ten (10) days from issuance thereof. It shall further specify before whom the hearing will be conducted.

Unless otherwise designated, the term "hearing officer" in this Rule 6 shall include the Commission, an individual commissioner, or the Commission's designee authorized to conduct a hearing.

6.06 ANSWER TO CHARGE

- a. A respondent shall file with the Commission an original and three (3) copies of its answer to the charge within seven (7) days after service of the Notice of Hearing. At the same time, respondent shall serve a copy of the answer on the other parties to the proceeding and furnish proof of service to the Commission.
- b. A Motion for Bill of Particulars may be filed with the hearing officer and concurrently with the charging party no later

than five (5) days following service upon respondent of the Notice of Hearing.

- c. The ruling upon the Motion for Bill of Particulars may be made with or without a hearing, at the discretion of the hearing officer.
- d. Should a Motion for Bill of Particulars be granted in whole, or in part, such ruling shall specify the time requirements for filing the Bill of Particulars and for filing the answer to the charge. If the Motion is denied, the ruling shall specify the time requirement for filing an answer to the charge.
- e. The respondent shall specifically admit or deny each of the allegations in the charge, unless the respondent is without knowledge, in which case the respondent shall so state, and such statement shall operate as a denial.
- f. If a timely answer is not filed, all allegations of the charge shall be deemed admitted.
- g. If any allegation in the charge is not denied in the answer, that allegation shall be deemed admitted.
- h. The answer may include a specific, detailed statement of any affirmative defense.

6.06.1 REQUESTS FOR INTERVENTION

Requests to intervene in a proceeding pursuant to Rule 6 shall be filed to

writing with the hearing officer. Such request shall set forth the basis of the intervention and shall be served on all other parties to the proceeding. The hearing officer shall notice a hearing on the request, make a determination as to the merit and timeliness of the request and rule promptly thereon.

6.06.2 SCHEDULING OF HEARINGS

- a. The hearing officer shall arrange with the Commission office and the parties a mutually satisfactory date and time for a hearing. In the absence of such an arrangement, the hearing officer shall have the authority to set the date and time for the hearing.
- b. Requests for continuance or cancellation of a hearing shall be made in writing to the hearing officer no later than fifteen (15) days prior to such hearing. Such request shall state the grounds for the request and the position of each party regarding the request. A copy of the request shall be served on each party to the proceedings and proof thereof filed with the Commission. The hearing officer shall expeditiously rule on the request and communicate his ruling to the parties.
- c. Rulings of the hearing officer concerning all scheduling matters are final and not

appealable to the Commission.

- d. A charge shall not be continued beyond 180 days from the date of filing with the Employee Relations Commission, except by mutual agreement of the parties to the action. Any other such matters will be automatically dismissed.

6.07 HEARINGS

- a. Hearings shall be limited to argument and evidence on issues of fact or law material to the proceedings.
- b. Parties, including intervenors, may appear at a hearing in person, by counsel or by other representatives; may call, examine and cross-examine witnesses; and may introduce into the record documentary or other evidence.
- c. The technical rules of evidence prevailing in the courts shall not be controlling.
- d. The hearing officer may direct or permit the filing of briefs and/or proposed findings, conclusions and order.
- e. Any party may file with the hearing officer a written application for the issuance of a subpoena requiring the attendance of a witness or the production of books or documents. The application shall name and identify the witness or the documents sought and the reason therefor. The hearing officer, at his discretion, shall issue such

subpoena on a form provided by the Commission. The person served with a subpoena or any party to the action may file with the hearing officer a motion to revoke or modify. If any party files with the hearing officer such a motion, it shall also be served on the other parties named in the charge. The hearing officer shall rule on such motion.

In the event an unusually large number of subpoenas are issued for employees from a work area, the loss of which employees may cause a serious impact on County operations, the hearing officer may designate an orderly schedule of appearances so as not to cause a negative impact on County operations.

- f. The hearing officer, upon failure of any party to comply with a subpoena, may disregard all related evidence offered by such party.
- g. All witnesses shall appear in person and shall be examined under oath or affirmation. The hearing officer shall have the authority to administer oaths and affirmations.
- h. Within five (5) days after receipt of the Notice of Hearing, any party may request the hearing officer to withdraw by filing an affidavit with the Commission setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the Commission, such affidavit is

filed with due diligence and if upon due inquiry it is found sufficient, they shall disqualify him and he shall be withdrawn from the proceeding. If the Commission does not disqualify him, they shall so rule and the hearing shall proceed.

- i. An official reporter shall make the only official transcript of such proceedings. The parties may make their own arrangements with the official reporter for copies of such transcript.

6.07.1 LOCATION OF HEARINGS

Hearings shall be held in the County Civic Center complex, unless otherwise agreed to by the Commission at the request of either party.

6.08 SUBSTITUTION OF HEARING OFFICER

If a hearing officer becomes unavailable after the hearing has been opened or concluded, the Commission may transfer the case to another hearing officer for the purpose of further hearing or preparation of the report pursuant to Rule 6.10.

6.09 AMENDMENTS AND WITHDRAWAL OF CHARGES

- a. The hearing officer may permit

an amendment to the charge or answer at any time on such terms as may be deemed just and consistent with due process.

- b. The charge may be withdrawn upon motion of the charging party only upon approval by the Commission.

6.10 REPORT OF INDIVIDUAL HEARING OFFICER

- a. Within thirty (30) days following the close of a hearing, the hearing officer shall prepare a report containing recommended findings of fact, conclusions and final order and his reasons therefor. This report shall be served on all parties involved and filed with the Commission.
- b. Within ten (10) days after service of this report, a party may file with the Commission exceptions thereto. A copy of the exceptions shall be served on each party to the proceedings and proof thereof filed with the Commission. The exceptions shall:
 - (1) Set forth specifically the questions of fact, law or policy to which exceptions are taken;
 - (2) Designate by citation of page the portions of the record relied upon; and
 - (3) State the grounds for the exceptions and include citation of authorities, if any.
- c. Within ten (10) days following

service of exceptions, a statement in opposition thereto may be filed with the Commission and a copy served on each party to the proceedings and proof thereof filed with the Commission.

6.11 DECISION AND ORDER OF THE COMMISSION

- a. Where a hearing officer has been appointed, the Commission may adopt, modify or reverse the report, or any part thereof. If the Commission accepts the findings of fact contained in such report, it need not read the record of the hearing. If the Commission declines to accept such findings, it must read the record. The Commission shall issue within a reasonable period of time its Decision and Order.
- b. Where the hearing was conducted by the Commission as a whole, the Commission shall issue within a reasonable period of time its Decision and Order.

6.12 APPEALS

Within ten (10) days after the issuance of the Decision and Order by the Commission, any interested party may file a motion for rehearing or reconsideration, setting forth the specific grounds therefor. The motion shall be accompanied by five (5) copies and a separate statement that

it has been served on all parties appearing in the proceedings. Any of such parties may file a written response to such motion within five (5) days of receipt of a copy thereof. The Commission may, but need not, hold a hearing on such motion. Thereafter, the Commission shall in writing affirm, modify or set aside its previous determination and that action shall be considered final.

6.13 WAIVER OF TIME REQUIREMENTS

Either the Commission or the hearing officer, as the case may be, may act to modify or waive any of the specific time requirements set forth in this Rule 6 upon a showing of good cause, except that the individual hearing officer shall not be empowered to extend the time for filing his report without the consent of the Commission.

RULE 7

IMPASSES; RESOLUTION OF DISPUTES PURSUANT TO SECTIONS 11 AND 13 OF THE ORDINANCE

7.01 SCOPE

This Rule governs the general procedures relating to mediation, fact-finding and arbitration in employee relations disputes arising under Sections 11 and 13 of the Ordinance.

7.02 POLICY

It is the policy of the Commission to encourage parties to voluntarily settle their differences. If the parties are unable to resolve their differences, either party may request the assistance of the Commission and the Commission shall assist the parties by providing mediation or fact-finding in order to promote cooperative relations between the County and its employees and to protect the public by assuring effective and orderly operations of County government.

7.03 NOTICE OF IMPASSE

If, after good faith negotiations, County management and a certified employee organization fail to reach agreement, either party to the negotiations may file a written notice of impasse with the Commission and simultaneously serve a copy on the other party involved. The notice of impasse shall contain the following:

- a. Name, address and telephone number of certified employee organization and the name and telephone number of its principal representative to be contacted.
- b. Name and telephone number of the principal management representative to be contacted.
- c. Identification of the bargaining unit by the nomenclature on the certification.
- d. Dates of negotiation sessions held.
- e. A clear and concise statement of the issues in dispute.
- f. A clear and concise statement of any other relevant facts, if any.

- g. A statement noting whether the request is joint or unilateral.
- h. Proof that a copy of the notice of impasse was served to other parties to the negotiations.

7.04 INVESTIGATION

The Commission, or its Executive Secretary, as the Commission may direct, shall as promptly as practical investigate and determine if an impasse does in fact exist. If the Commission finds that an impasse exists, it may, upon its own motion, appoint a mediator from its register of mediators.

7.05 MEDIATION

- a. The function of a mediator shall be to assist the parties in a dispute to arrive at a voluntary agreement. The mediator may hold separate or joint meetings with the parties or their representatives and such meetings shall be private and nonpublic in nature. Any information disclosed by the parties to the mediator, in the performance of his duties, shall not be divulged. All material received or prepared by the mediator while serving in such capacity shall be classified as confidential.
- b. The mediator shall report in writing to the Commission the results of his mediation efforts, as follows:
 - (1) A statement of the dates and duration of the meetings held.

- (2) A brief description of the unresolved issues which existed at the beginning of the mediation effort.
- (3) A brief statement of the issues resolved through mediation and the terms of the agreement reached.
- (4) A statement of resolved issues, if any.
- (5) A recommendation as to whether or not the Commission should invoke fact-finding with recommendations for settlement of the unresolved issues.

7.06 FACT-FINDING

- a. The function of a fact-finder shall be to meet with the parties involved in the impasse to investigate, inquire or to conduct a hearing to determine the facts relating to the issues in dispute. Such a hearing shall not be public unless all parties and the fact-finding agree to have it public. The fact-finder may issue subpoenas to compel the attendance of witnesses and the production of books and papers relating to any matter under inquiry, investigation or hearing. (Provisions in Rule 6.07 e. and f. apply)
He may administer oaths and affirmations. At the conclusion of a hearing, the fact-finder may allow the parties to simultaneously submit closing

briefs within a specified period of time. Within fifteen (15) days after receipt of the official transcript of the proceedings or of the parties' closing briefs, whichever is later, the fact-finder shall file an original and five (5) copies of his report and recommendations with the Commission.

- b. Upon receipt of the report and recommendations, the Commission shall promptly transmit copies thereof to the parties in interest. The parties to the impasse shall file with the Commission a written notification of acceptance or rejection, in whole or in part, and the reasons therefor within fifteen (15) days after receipt of the fact-finder's report and recommendations. The Commission may, in its discretion, publish the findings of fact and recommendations for public information.

7.07 ARBITRATION

- a. A request for arbitration shall be on the form provided by the Commission, and shall include:
 - (1) The language of the agreement authorizing arbitration.
 - (2) A brief statement of the issue(s) in dispute, properly referenced, with the language of the references cited attached.
- b. Arbitration shall be governed by the appropriate sections of

the California Code of Civil Procedure.

- c. The Commission may exercise its authority to decide threshold issues in arbitration rather than refer such procedural issues to an arbitrator. The Commission may hear argument from the parties at its regularly scheduled meeting and may determine whether additional information is required or decide the matter at the conclusion of oral argument.
- d. Requests for arbitration will not be continued beyond 180 days from the date of filing with the Commission, except for good cause being shown or by mutual agreement of the parties. Any other such matters will automatically be dismissed.
- e. The arbitrator shall render his award within thirty (30) days after the close of the hearing (or the receipt of briefs, if any are required). In the event additional time is needed, the arbitrator must obtain the parties' approval of an extension of time.
- f. Within thirty (30) days after receipt of the arbitrator's award, the parties to the dispute shall file with the Commission a written notification of the acceptance or rejection, in whole or in part, and the reasons therefor.

7.08 SELECTION

Any person who has been selected by

the Commission for listing on its register of mediators, fact-finders or arbitrators may act in such capacity when appointed by the Commission, or by a Commissioner authorized to make such an appointment. The Commission, or any member of the Commission at the Commission's discretion, may serve as mediator, fact-finder or arbitrator.

7.09 WAIVER OF TIME REQUIREMENTS

The Commission may, on its own motion or on motion of any party showing good cause, modify or waive any of the specific time requirements set forth in this Rule 7.

RULE 8

8.01 PETITIONS FOR AGENCY SHOP RECISION: FILING

a. A petition requesting an election for the purpose of rescinding an agency shop provision in a memorandum of understanding may be filed by a single employee or a group of employees in a class or classes included in the affected employee representation unit.

b. The Petition for Agency Shop Recision shall be in writing on forms provided by the Commission, shall be signed and shall contain a declaration by the person signing that its contents are true and correct to the best of his knowledge and belief. The original and eight (8) copies shall be filed with the Commission.

c. The Petition for Agency Shop Recision shall contain:

- (1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for information.
- (2) The name and address of the certified employee organization.
- (3) The name and address of the County Department, Board, Commission, or other body involved.
- (4) A description of the employee representation unit involved and the approximate number of employees therein.
- (5) The implementation and expiration dates of the memorandum of understanding covering the affected employee representation unit.
- (6) Any other relevant facts.

d. At the time of filing a Petition for Agency Shop Recision, the petitioner shall submit to the Commission evidence that at least thirty percent (30%) of the employees in the representation unit desire to rescind the agency shop provision of the memorandum of understanding in question. Such statement shall contain the printed name and signature of employee executed within ninety (90) days preceding the filing date of the petition. If such evidence is not timely submitted, the Commission may dismiss the petition.

8.02 TIME TO FILE

A Petition for Agency Shop Recision may be filed at anytime following the ratification of the memorandum of understanding. Provided, however, that no such petition may be filed during the term of a memorandum of understanding if an agency shop recision election has been held during said term.

8.03 NOTICE OF FILING

a. Upon the filing of a Petition for Agency Shop Recision, the Commission shall cause a true copy thereof to be posted on the Commission's Official Bulletin Board and/or docket and true copies to be given to the affected employee organization, the Director of Personnel and other affected management representatives.

An accompanying notice shall state the date of filing of the petition.

b. Consideration of:

- (1) Whether a petition meets the formal requirements of the Ordinance and these Rules, and

- (2) Whether the proof of interest of the petitioner is sufficient will be set as a matter of business on the Commission's agenda at a regularly scheduled meeting promptly following the last date set for receipt of such proof of interest. The determination whether such proof is satisfactory shall be handled administratively by the Commission

and shall not be subject to question thereafter.

8.04 COMMISSION ACTION ON PETITION

If the Commission determines that a petition is sufficient as to form and that the proof of interest is also sufficient, the Commission shall order an election, the form of the ballot, and the employees eligible to vote. The method of conducting the election shall be governed, insofar as applicable, by Rules 5.10 to 5.35, inclusive.

8.05 RESULTS OF ELECTION

An agency shop provision in a memorandum of understanding shall be rescinded by a numerical majority vote of all the eligible employees in the representation unit covered by said memorandum of understanding (i.e., 50% plus one of the votes of all eligible employees).

(Rule 8.01 - 8.05 adopted 4/17/92)